

No. _____

**IN THE COURT OF APPEALS
FIFTH SUPREME JUDICIAL DISTRICT
DALLAS, TEXAS**

FILED IN
5th COURT OF APPEALS
DALLAS, TEXAS
08/02/2019 12:11:00 PM

LISA MATZ
Clerk

In re Ashley Pardo and Daniel Pardo, individually and
as next friends for KDP, a minor,

Relators

**EMERGENCY MOTION TO SUSPEND
ORDER PENDING RULING ON
PETITION FOR WRIT OF MANDAMUS**

*From Kaufman County District Court
Kaufman County, Texas
Hon. Mike Chitty, 422nd District Judge
Cause No. 102717-CC*

Respectfully Submitted:

Scheef & Stone, LLP
James A. Pikel
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**ATTORNEYS FOR MOVANTS AND
RELATORS**

In accordance with Texas Rules of Appellate Procedure 10 and 52.10, Movants and Relators request the Court issue an order for temporary relief to stay operation and enforcement of the trial court's July 24, 2019 *Temporary Order Following Adversary Hearing* (the Order) pending review of that order via Movants' pending Petition for Writ of Mandamus. A copy of the (redacted) Order is attached hereto for the Court's review.

No party will be adversely affected by this requested stay. However, the Movants and their young child, KDP, in accordance with the terms of the subject Order, are being adversely affected by operation of the Order in that they are being compelled to undergo psychiatric evaluation and a home study/social study (and incurring associated burdens), compelled to participate in "medical treatment plans" of unknown content and scope, compelled to "comply" with treatment plans recommended by Children's Medical Center of unknown content and scope—with care possibly provided by Dr. Anderson who they fired for neglect—and without any right to seek second opinions if they disagree with these plans, compelled to release to the State confidential medical and other records of their family, they have been deprived of custody of, and granted only very limited access to, their child, and KDP may be in danger of not receiving needed medical treatment in the interim while this Honorable Court reviews and makes rulings on the Petition for Writ of Mandamus.

All matters preliminary to seeking this relief have been accomplished.

PRAYER

Movants request the Court issue an order temporarily suspending the Order pending ruling on the Petition for Writ of Mandamus, and request such other and futher relief as is just.

Respectfully Submitted:

/s/ James A. Pikel
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jim.pikel@solidcounsel.com

**ATTORNEYS FOR MOVANTS
AND RELATORS**

CERTIFICATE OF COMPLIANCE
TRAP 52.10

I hereby certify that on August 2, 2019, and in accordance with Texas Rule of Appellate Procedure 52.10, I notified (by voicemail) Mr. Clay Watkins, attorney for Texas Department of Family and Protective Services in the trial court, that I would be filing this Motion seeking emergency temporary relief from the subject Order.

/s/ James A. Pikel

CERTIFICATE OF SERVICE

I certify that on August 2, 2019, I served by U.S. mail, postage pre-paid, a copy of this Motion on the following persons:

- a. **Attorney Ad Litem for KDP:** Courtney Wortham, 114 North Adelaide Street, Terrell, Texas 75160
- b. **Respondent:** Hon. Mike Chitty, Judge, 422nd Judicial District Court, 100 W. Mulberry St., Kaufman, Texas 75142
- c. **Attorney for Real Party in Interest:** Clay Watkins, Department of Family and Protective Services, 100 W. Mulberry St., 2525 E. Highway 175, Suite E, Kaufman, Texas 75142

/s/ James A. Pikel

**NOTICE: THIS DOCUMENT
CONTAINS SENSITIVE DATA**

CAUSE NO. 102717-CC

IN THE INTEREST OF

[REDACTED]

A CHILD

§
§
§
§
§

IN COUNTY COURT

AT LAW

KAUFMAN COUNTY, TEXAS

TEMPORARY ORDER FOLLOWING ADVERSARY HEARING

On **July 2, 2019**, a full Adversary Hearing pursuant to § 262.201, Texas Family Code, was held in this cause.

1. Appearances

- 1.1. The Department of Family and Protective Services ("the Department") appeared through **TABATHA SIMS**, caseworker, and by attorneys, **CLAY WATKINS** and **LESLIE ODOM** and announced ready.
- 1.2. Respondent Mother, **ASHLEY PARDO** appeared in person and through attorneys of record **CHRIS BRANSON** and **JULIE JACOBSON** and announced ready.
- 1.3. Respondent Father, **DANIEL PARDO**, appeared in person and through attorneys of record **CHRIS BRANSON** and **JULIE JACOBSON** and announced ready.
- 1.4. **LONE STAR CASA**, appointed by the Court as Guardian Ad Litem of the child the subject of this suit, appeared and announced ready.
- 1.5. **COURTNEY WORTHAM**, appointed by the Court as Attorney Ad Litem of the child the subject of this suit, appeared and announced ready.

2. Jurisdiction

- 2.1. The Court, after examining the record and hearing the evidence and argument of counsel, finds that all necessary prerequisites of the law have been satisfied and that this Court has jurisdiction of this case and of all the parties.
- 2.2. The Court further finds that the State of Texas has jurisdiction of this case pursuant to Subchapter C, Chapter 152, Texas Family Code, because Texas was the home state of the child on the date of the commencement of this proceeding, and there is no prior child custody determination in another state.

3. Indian Child Welfare Act

The Court has inquired whether the child's family has Native American heritage and has not yet identified any Native American Tribe with which the child may be associated. Further inquiry shall be made.

4. Findings

4.1. Having examined and reviewed the Department's pleadings and the sworn affidavit accompanying the petition and based upon the facts contained therein and the evidence presented to this Court at the hearing conducted on this date, the Court finds there is sufficient evidence to satisfy a person of ordinary prudence and caution that: (1) there was a danger to the physical health or safety of the child which was caused by an act or failure to act of the person entitled to possession. The Court further finds that it is contrary to the welfare of the child, [REDACTED] to remain in the home of **ASHLEY PARDO** or of **DANIEL PARDO**, and; (2) the urgent need for protection required the immediate removal of [REDACTED] and reasonable efforts consistent with the circumstances and providing for the safety of [REDACTED] were made to eliminate or prevent the removal of [REDACTED] and (3) reasonable efforts have been made to enable [REDACTED] to return to the home of **ASHLEY PARDO** or of **DANIEL PARDO**, but there is a substantial risk of a continuing danger if [REDACTED] is returned to the home of **ASHLEY PARDO** or of **DANIEL PARDO**. Further, the Court does make a finding of family violence as defined by Texas Family Code Section 71.004.

4.2. Findings for Appointment of Managing and Possessory Conservator

4.2.1. The Court finds that appointment of the parent or parents as managing conservator of the child is not in the best interest of the child because the appointment would significantly impair the child's physical health or emotional development.

4.2.2. The Court finds that it is in the best interest of child to limit the rights and duties of **ASHLEY PARDO** appointed as possessory conservator.

4.2.3. The Court finds that it is in the best interest of child to limit the rights and duties of **DANIEL PARDO** appointed as possessory conservator.

4.3. If the child has not been placed with a relative or other designated caregiver, the Court finds that the Department has provided the reasons for not placing the child and the actions, if any, to be taken to place the child.

4.4. The Court finds that the following orders for the safety and welfare of the child are in the best interest of the child.

5. Conservatorship

- 5.1. **IT IS ORDERED** that the Department of Family and Protective Services is appointed Temporary Managing Conservator of the following child:

Name: [REDACTED]
Sex: **Male**
Birthplace: **Unknown**
Birth Date: **February 3, 2015**
Indian Child Status: **Unconfirmed**

- 5.2. In accordance with § 262.116, Texas Family Code, the Court finds that the Department of Family and Protective Services did not take possession of the child under this subchapter based on evidence that the Parent:

- 5.2.1. homeschooled the child;
- 5.2.2. is economically disadvantaged;
- 5.2.3. has been charged with a nonviolent misdemeanor other than:
 - 5.2.3.1. an offense under Title 5, Penal Code;
 - 5.2.3.2. an offense under Title 6, Penal Code; or
 - 5.2.3.3. an offense that involves family violence, as defined by Section 71.004 of this code;
- 5.2.4. provided or administered low-THC cannabis to a child for whom the low-THC cannabis was prescribed under Chapter 169, Occupations Code; or
- 5.2.5. declined immunization for the child for reasons of conscience, including a religious belief.

- 5.3. **IT IS ORDERED** that the Temporary Managing Conservator shall have all the rights and duties set forth in § 153.371, Texas Family Code.

- 5.3.1. **IT IS ORDERED** that, in addition to the rights and duties listed in § 153.371, Texas Family Code, the Department is authorized to consent to medical care for the subject child, pursuant to § 266.004, Texas Family Code.

- 5.4. **IT IS THEREFORE ORDERED** that **ASHLEY PARDO** is appointed Temporary Possessory Conservator of the child, [REDACTED] with the limited rights and duties set forth in **Attachment A**.

- 5.5. **IT IS THEREFORE ORDERED** that **DANIEL PARDO** is appointed Temporary Possessory Conservator of the child, **KALEB PARDO**, with the limited rights and duties set forth in **Attachment A**.

6. Possession and Access

- 6.1. The Court finds that the application of the guidelines for possession of and access to the child, as set out in Subchapter F, Chapter 153, Texas Family Code, is not in the child's best interest. **IT IS ORDERED** that **ASHLEY PARDO** shall have limited access to and possession of the child as set forth in **Attachment A**, which includes orders relating to the Temporary Visitation Schedule.
- 6.2. The Court finds that the application of the guidelines for possession of and access to the child, as set out in Subchapter F, Chapter 153, Texas Family Code, is not in the child's best interest. **IT IS ORDERED** that **DANIEL PARDO** shall have limited access to and possession of the child as set forth in **Attachment A**, which includes orders relating to the Temporary Visitation Schedule.

7. Required Home Study/ Social Study

- 7.1. The Court finds that Respondent Mother, **ASHLEY PARDO**, has submitted the Child Placement Resources Form required under § 261.307, Texas Family Code.
- 7.2. The Court finds that Respondent Father, **DANIEL PARDO**, has submitted the Child Placement Resources Form required under § 261.307, Texas Family Code.
- 7.3. The Court finds that [REDACTED] is not currently placed with a relative or other designated caregiver. The Court finds that the Department does not have the option of placing the child with a relative of other designated caregiver at this time.
- 7.4. **IT IS ORDERED** that each Parent, Alleged Father or Relative of the subject child before the Court complete the Child Placement Resources Form provided under § 261.307, and file the completed Form with the Court if the form has not previously filed. **IT IS FURTHER ORDERED** that each Parent, Alleged Father or Relative provide the Department with a copy of the completed Form and the full name and current address or whereabouts and phone number of any absent parent, alleged father or relative of the subject child, pursuant to § 262.201, Texas Family Code.

8. Finding and Notice

THE COURT FINDS AND HEREBY NOTIFIES THE PARENTS THAT EACH OF THE ACTIONS REQUIRED OF THEM BELOW ARE NECESSARY TO OBTAIN THE RETURN OF THE CHILD, AND FAILURE TO FULLY COMPLY WITH THESE ORDERS MAY RESULT IN THE RESTRICTION OR TERMINATION OF PARENTAL RIGHTS.

9. Psychological or Psychiatric Evaluation:

- 9.1. **IT IS FURTHER ORDERED** that **ASHLEY PARDO** and **DANIEL PARDO** shall appear at a date and time to be determined by a service provider selected by the Department and shall submit to and cooperate fully in the preparation of this court-ordered psychological or psychiatric evaluation. Respondent is hereby notified that any communications made with a counselor, therapist, psychiatrist, or psychologist are not confidential.

10. Compliance with Service Plan

- 10.1. **ASHLEY PARDO** and **DANIEL PARDO** are **ORDERED**, pursuant to § 263.106 Texas Family Code, to comply with each requirement set out in the Department's original, or any amended, service plan during the pendency of this suit.

- 10.2. **IT IS FURTHER ORDERED** that:

10.2.1. **ASHLEY PARDO** and **DANIEL PARDO** shall participate and follow medical treatment plans for [REDACTED] [REDACTED] as recommended by Children's Medical Center.

10.2.2. **ASHLEY PARDO** and **DANIEL PARDO** shall provide the Department with a social history and any other information the Department requires.

10.2.3. **ASHLEY PARDO** and **DANIEL PARDO** shall provide any other information to the Department or Children's Medical Center that may be needed for treatment and care for [REDACTED]

10.2.4. **ASHLEY PARDO** and **DANIEL PARDO** shall sign a release of information pertaining to all medical records of [REDACTED] to the Department and provide the Department with a list of the names and addresses of the physicians who have treated [REDACTED].

10.2.5. If there is a new diagnosis, **ASHLEY PARDO** and **DANIEL PARDO** will follow treatment plan recommended by Children's Medical Center.

- 10.3. The court finds that this order, as supplemented by the service plan to be approved at the Status Hearing under Texas Family Code §263.201, sufficiently defines the rights and duties of the parents of the child pursuant to Texas Family Code § 153.602 and satisfies the requirements of a parenting plan. To the extent there is evidence demonstrating that the child has been exposed to harmful parental conflict, the court orders that the Department address this issue in the Family Plan of Service.

11. Additional Orders

- 11.1. **ASHLEY PARDO** and **DANIEL PARDO** are hereby enjoined from posting, sharing, or otherwise disclosing by any means any information regarding this child and/or case on or to any form of media.
- 11.2. Placement with an appropriate family member is the first option, however if there is no appropriate family member then the Department will follow the advice of CASA and the Ad Litem, including placement in foster care.

12. Required Information

- 12.1. **IT IS ORDERED** that each Respondent to this cause provide to the Department and the Court, no later than thirty days from the date of this hearing, the information detailed below.
- 12.2. **IT IS ORDERED** that each Respondent provide the Department and the Court information sufficient to establish the parentage and immigration status of the child, including but not limited to marriage records, birth or death certificates, baptismal records, social security cards, records of lawful permanent residence ("green cards"), naturalization certificates, and any records from the United States Citizenship and Immigration Services, and records of Indian Ancestry or Tribal Membership.
- 12.3. **IT IS ORDERED** that each Respondent provide the Department with any information regarding whether the child or the child's family has Native American heritage and identify any Native American Tribe with which the child may be associated and provide all available family history information relevant to determination of Indian child status on request.
- 12.4. **IT IS ORDERED** that each Respondent furnish to the Department all information necessary to ensure the Department has an adequate medical history for the child, including but not limited to the immunization records for the child and the names and addresses of all physicians who have treated the child.
- 12.5. **IT IS ORDERED** that each Respondent provide the Department information regarding the medical history of the parent and parent's ancestors on the medical history report form, pursuant to § 161.2021, Texas Family Code.
- 12.6. **IT IS ORDERED** that each Respondent to this cause provide to the Department and the Court a current residence address and telephone number at which each can be contacted.
- 12.7. **IT IS ORDERED** that each Respondent to this cause notify the Department and the Court of any change in his or her residence address or telephone number within five (5) days of a change of address or telephone number.

- 12.8. **IT IS ORDERED** that each Respondent provide the Department information regarding the medical history of the parent and parent's ancestors on the medical history report form, pursuant to § 161.2021, Texas Family Code.

13. Duty To Provide Information

- 13.1. **IT IS ORDERED** pursuant to § 153.076(a), Texas Family Code that each conservator of a child has a duty to inform the other conservator of the child in a timely manner of significant information concerning the health, education, and welfare of the child.

- 13.2. **IT IS ORDERED** pursuant to § 153.076(b), Texas Family Code, that each conservator of the child has the duty to inform the other conservator if the conservator resides with for at least 30 days, marries, or intends to marry a person who the conservator knows:

13.2.1. is registered as a sex offender under Chapter 62, Code of Criminal Procedure; or

13.2.2. is currently charged with an offense for which on conviction the person would be required to register under that chapter.

- 13.3. The notice required to be made under § 153.076(b), Texas Family Code, must be made as soon as practicable but not later than the 40th day after the date the conservator of the child begins to reside with the person or the 10th day after the date the marriage occurs, as appropriate. The notice must include a description of the offense that is the basis of the person's requirement to register as a sex offender or of the offense with which the person is charged.

- 13.4. **IT IS ORDERED** pursuant to §153.076(b-1), Texas Family Code, that each conservator of [REDACTED] has the duty to inform the other conservator of the child if the conservator:

13.4.1. Establishes a residence with a person who the conservator knows is the subject of a final protective order sought by an individual other than the conservator that is in effect on the date the residence with the person is established, pursuant to §153.076(b-1)(1), Texas Family Code; or

13.4.2. Resides with, or allows unsupervised access to a child by, a person who is the subject of a final protective order sought by the conservator after the expiration of the 60 day period following the date the final protective order is issued, pursuant to §153.076(b-1)(2), Texas Family Code; or

13.4.3. Is the subject of a final protective order issued after the date of the order establishing conservatorship, pursuant to §153.076(b-1)(3), Texas Family Code.

13.5. The notice required to be made under §153.076(b-1), Texas Family Code, must be made as soon as practicable but not later than:

13.5.1. The 30th day after the date the conservator establishes residence with the person who is the subject of the final protective order, if notice is required by §153.076(b-1)(1), Texas Family Code; or

13.5.2. The 90th day after the date the final protective order was issued, if notice is required by §153.076(b-1)(2), Texas Family Code; or

13.5.3. The 30th day after the date the final protective order was issued, if notice is required by §153.076(b-1)(3), Texas Family Code.

13.6. A CONSERVATOR COMMITS AN OFFENSE IF THE CONSERVATOR FAILS TO PROVIDE NOTICE IN THE MANNER REQUIRED BY SUBSECTIONS (b) AND (c), OR SUBSECTIONS (b-1) AND (c-1), AS APPLICABLE, OF § 153.076, Texas Family Code. AN OFFENSE UNDER THIS SUBSECTION (d) IS A CLASS C MISDEMEANOR.

13.7. "YOU HAVE THE RIGHT UNDER §262.102(d), TEXAS FAMILY CODE, TO BE REPRESENTED BY AN ATTORNEY. IF YOU ARE INDIGENT AND UNABLE TO AFFORD AN ATTORNEY, YOU HAVE THE RIGHT TO REQUEST THE APPOINTMENT OF AN ATTORNEY BY CONTACTING THE COURT AT COUNTY COURT AT LAW OF KAUFMAN COUNTY, {Court's Address}, , TEXAS {zip code}, () - . IF YOU APPEAR IN OPPOSITION TO THE SUIT, CLAIM INDIGENCE, AND REQUEST THE APPOINTMENT OF AN ATTORNEY, THE COURT WILL REQUIRE YOU TO SIGN AN AFFIDAVIT OF INDIGENCE AND THE COURT MAY HEAR EVIDENCE TO DETERMINE IF YOU ARE INDIGENT. IF THE COURT DETERMINES YOU ARE INDIGENT AND ELIGIBLE FOR APPOINTMENT OF AN ATTORNEY, THE COURT WILL APPOINT AN ATTORNEY TO REPRESENT YOU."

14. Notice of Status Hearing

IT IS ORDERED that this cause is set for a Status Hearing, pursuant to § 263.201

Texas Family Code, on August 9th, 2019, at 9:00 o'clock a.m. in the County Court at Law of Kaufman County in Kaufman, Texas.

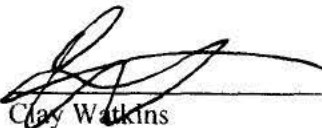
15. All said Temporary Orders shall continue in force during the pendency of this suit or until further order of the Court.

SIGNED this 24th day of July, 2019.

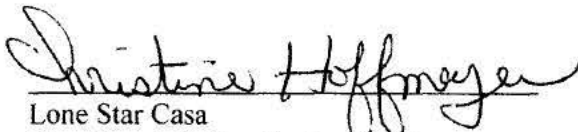


JUDGE PRESIDING

APPROVED AS TO FORM:



Clay Watkins
Attorney for Petitioner, Department of
Family and Protective Services



Kristine Hoffmeyer
Lone Star Casa
Guardian Ad Litem for the Child

Courtney Wortham
Attorney Ad Litem for the Child

Ashley Pardo
Mother of the Child

Daniel Pardo
Father of the Child

Chris Branson/Julie Jacobson
Attorney for Respondent Mother and Father

15. All said Temporary Orders shall continue in force during the pendency of this suit or until further order of the Court.

SIGNED this _____ day of _____, 2019.

JUDGE PRESIDING

APPROVED AS TO FORM:

Clay Watkins
Attorney for Petitioner, Department of
Family and Protective Services

Lone Star Casa
Guardian Ad Litem for the Child

Courtney Repka Wortham
Courtney Wortham
Attorney Ad Litem for the Child

Ashley Pardo
Mother of the Child

Daniel Pardo
Father of the Child

Chris Branson/Julie Jacobson
Attorney for Respondent Mother and Father

ATTACHMENT A - TEMPORARY VISITATION

16. Rights and Duties of Temporary Possessory Conservator

16.1. Each Temporary Possessory Conservator appointed in this Order shall have the following rights:

- 16.1.1. the right to receive information concerning the health, education, and welfare of the child;
- 16.1.2. the right to access to medical, dental, psychological, and educational records of the child;
- 16.1.3. the right to consult with a physician, dentist, or psychologist of the child;
- 16.1.4. the right to consult with school officials concerning the child's welfare and educational status, including school activities;
- 16.1.5. the right, during times of unsupervised possession, to consent for the child to medical, dental, and surgical treatment during an emergency involving immediate danger to the health and safety of the child; and
- 16.1.6. the right, during times of possession, to direct the moral and religious training of the child.

16.2. Each Temporary Possessory Conservator appointed in this Order shall have the following duties:

- 16.2.1. the duty, during periods of possession of the child which are not supervised by the Department or its designee, of care, control, protection, and reasonable discipline of the child; and
- 16.2.2. the duty to support the child, including providing the child with clothing, food, and shelter during periods of possession of the child which are not supervised by the Department or its designee.

17. Temporary Visitation Schedule: ASHLEY PARDO

17.1. The Court approves the Temporary Visitation Schedule presented by the Department. **ASHLEY PARDO** shall have possession and access as set forth in the Temporary Visitation Schedule. The Temporary Visitation Schedule shall remain in effect until the Visitation Plan is developed.

18. Temporary Visitation Schedule: DANIEL PARDO

- 18.1. The Court approves the Temporary Visitation Schedule presented by the Department. **DANIEL PARDO** shall have possession and access as set forth in the Temporary Visitation Schedule. The Temporary Visitation Schedule shall remain in effect until the Visitation Plan is developed.